

REMARKS

Claims 1-20 and 22-33 are pending in the current application. Reexamination and reconsideration of all of the claims are respectfully requested.

§ 103(a) / § 102(e) Bishop Reference

The Examiner rejected claims 1, 2, 4-15, 17-20, 22-26, and 28-33 under 35 U.S.C. 103(a) based on Kerstens et al., USP 5,248,876 ("Kerstens") in view of Bishop, U.S. Patent 6,091,488 ("Bishop").

Bishop is a § 102(e) reference against the present claims. See, Office Action dated 2/26/2003, p. 4, rejecting claim 32 based on Bishop under 35 U.S.C. § 102(e), thus recognizing Bishop as a § 102(e) reference.

Bishop has an effective filing date of March 22, 1999.

Applicants submit herewith a Declaration in accordance with 37 C.F.R. § 1.131 presenting documentary evidence that Applicants conceived of the invention prior to the effective filing date of Bishop, March 22, 1999, and diligently worked to constructively reduce the invention to practice by filing a patent application on the concept, for a time period from prior to March 22, 1999 through the filing date of the present application of March 23, 1999. Applicants submit that the enclosed Rule § 1.131 Declaration conclusively demonstrates prior conception and diligent reduction to practice of the claimed invention. Thus Applicants respectfully submit that Bishop is not §102(e) prior art against the present invention.

Removal of Bishop as prior art mandates removal of the §103 rejection of the foregoing claims based on Bishop, including independent claims 1, 12, 24, and 32. All claims dependent from these independent claims are allowable as they depend from allowable base claims.

Applicants therefore submit that all claims conform to 35 U.S.C. § 103 and that claims 1-23 are allowable over the references of record.


Accordingly, it is respectfully submitted that all claims fully comply with 35 U.S.C.
§103.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all claims of the present application are in condition for allowance. Reexamination and reconsideration of all of the claims, as amended, are respectfully requested and allowance of all the claims at an early date is solicited.

Should it be determined for any reason an insufficient fee has been paid, please charge any insufficiency to ensure consideration and allowance of this application to Deposit Account 502026.

Respectfully submitted,


Steven W. Smyrski, Esq.
Registration No. 38,312

Date: April 8, 2004

SMYRSKI & LIVESAY, LLP
3310 Airport Avenue, SW
Santa Monica, California 90405-6118
Phone: 310.397.9118
Fax: 310.397.9158